



# PUBLIC NOTICE

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## FEDERAL COMMUNICATIONS COMMISSION CLARIFIES CONDITIONAL GRANT OF RENEWAL LICENSES PURSUANT TO THE WIRELESS RADIO SERVICES ORDER

### WT Docket No. 10-112

1. By this Public Notice, we clarify the Commission's *Wireless Radio Services Order*,<sup>1</sup> in which we directed the Wireless Telecommunications Bureau (Bureau) to grant applications for renewal of certain wireless radio service licenses conditioned on the outcome of the rulemaking proceeding in WT Docket No. 10-112.

#### I. BACKGROUND

2. On May 20, 2010, the Commission adopted a Notice of Proposed Rulemaking and Order in WT Docket 10-112.<sup>2</sup> In the *Notice*, we proposed to harmonize the requirements for the renewal of wireless radio service (WRS) licenses for 25 geographically-licensed services and, separately, 15 services that are licensed on a site basis.<sup>3</sup>

3. In the companion *Wireless Radio Services Order*, we froze (*i.e.*, prohibited) the filing of applications that are mutually exclusive (*i.e.*, competing) with renewal applications filed during the pendency of the rulemaking proceeding.<sup>4</sup> In addition, we directed the "Bureau to grant currently pending applications for renewal, as well as applications for renewal filed during this rulemaking, on a conditional basis, subject to the outcome of this proceeding."<sup>5</sup> On August 6, 2010, the Wireless Communications

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<sup>1</sup> See Amendment of Parts 1, 22, 24, 27, 74, 80, 90, 95, and 101 To Establish Uniform License Renewal, Discontinuance of Operation, and Geographic Partitioning and Spectrum Disaggregation Rules and Policies for Certain Wireless Radio Services, WT Docket No. 10-112, *Notice of Proposed Rulemaking*, and Imposition of a Freeze on the Filing of Competing Renewal Applications for Certain Wireless Radio Services and the Processing of Already-Filed Competing Renewal Applications, *Order*, 25 FCC Rcd 6996 (2010) (*Notice and Wireless Radio Services Order*, respectively).

<sup>2</sup> *Id.*

<sup>3</sup> The Appendix to this Public Notice lists the affected services and associated radio service codes. The Commission also sought comment on proposals to unify requirements for the discontinuance of service by WRS licensees and the construction obligations of WRS licensees with spectrum licenses that have been divided by geographic partitioning, disaggregation of spectrum, or both. Comments and reply comments on the *Notice* were due August 6 and 23, 2010, respectively.

<sup>4</sup> *Wireless Radio Services Order*, 25 FCC Rcd at 7034 ¶ 101.

<sup>5</sup> *Id.* at 7038 ¶ 113.

Association International, Inc. (WCAI) filed a petition for partial reconsideration of the *Wireless Radio Services Order*,<sup>6</sup> requesting that we clarify the purpose of our conditional renewal directive. We address WCAI's petition and the Bureau's implementation of that directive below.

## **II. RENEWAL APPLICATIONS SUBJECT TO COMPETING APPLICATIONS**

4. When we adopted the *Wireless Radio Services Order*, we identified one Personal Communications Service and 149 Wireless Communications Service pending renewal applications that were subject to one or more mutually exclusive (*i.e.*, competing) applications for the spectrum.<sup>7</sup> The Bureau subsequently granted these renewal applications with the following condition: "License renewal granted on a conditional basis, subject to the outcome of FCC proceeding WT Docket No. 10-112 (see FCC 10-86, paras. 113 and 126)."<sup>8</sup> This condition "preserve[s] any available legal rights of the applicants that have already filed competing renewal applications,"<sup>9</sup> and memorializes the Commission's retention of authority to process (*i.e.*, accept for filing) the competing applications, if it determines that doing so would be appropriate and consistent with any rules and policies that may ultimately be adopted in WT Docket No. 10-112.<sup>10</sup>

## **III. OTHER RENEWAL APPLICATIONS**

5. The Commission's directive to grant applications for renewal conditioned on the outcome of rulemaking proceeding WT Docket No. 10-112 also applies to: (1) renewal applications pending when we adopted the *Wireless Radio Services Order* but not subject to competing applications; and (2) renewal applications filed during the pendency of the rulemaking proceeding.<sup>11</sup> We have determined that to implement the *Wireless Radio Services Order*, the Bureau should widen its alert about the conditional nature of the grant, by placing the conditional language it uses in connection with the renewal of the licenses identified in the *Wireless Radio Services Order* on the face of every affected license receiving a renewal grant during the pendency of the rulemaking proceeding.

6. Accordingly, all licenses renewed on or after May 25, 2010 (the *Order's* release date) in the services enumerated in the Appendix to this Public Notice will include the following condition:

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<sup>6</sup> Petitions for reconsideration were also filed by: (1) CTIA – The Wireless Association, AT&T Services, Inc., Cricket Communications, Inc., Rural Cellular Association, Sprint Nextel Corporation, T-Mobile USA, United States Cellular Corporation, and Verizon Wireless; and (2) Green Flag Wireless, LLC, CWC License Holding, Inc., James McCotter, and NTCH-CA, Inc. In addition, Atlantic Tele-Network, Inc. and Tisdale Telephone Company, LLC filed a Petition for Partial Reconsideration and/or Clarification of the *Wireless Radio Services Order* on June 24, 2010.

<sup>7</sup> Appendix C to the *Wireless Radio Services Order* lists these applications. The Commission also identified two pending applications for renewal of Cellular Radiotelephone Service licenses and related competing applications, which will be addressed separately.

<sup>8</sup> On October 22, 2010, Green Flag Wireless, LLC, CWC License Holding, Inc., James McCotter, and NTCH-CA, Inc. jointly filed a petition for reconsideration of these renewal grants.

<sup>9</sup> *Wireless Radio Services Order*, 25 FCC Rcd at 7034 ¶ 101.

<sup>10</sup> The Commission also could determine, as part of whatever rules and policies it adopts in WT Docket No. 10-112, to dismiss the competing applications and remove the condition from the licenses. See *Wireless Radio Services Order*, 25 FCC Rcd at 7033-34 ¶ 100.

<sup>11</sup> *Wireless Radio Services Order*, 25 FCC Rcd at 7038 ¶ 113.

**License renewal granted on a conditional basis, subject to the outcome of FCC proceeding WT Docket No. 10-112 (see FCC 10-86, paras. 113 and 126).<sup>12</sup>**

**IV. CLARIFICATION**

7. We clarify that, pursuant to our direction in the *Wireless Radio Services Order*, the scope of the above condition does not include retroactive application of any revisions to the Commission's substantive license renewal standards that it may adopt in the rulemaking proceeding to renewal applications filed before or during the pendency of the proceeding.<sup>13</sup> Rather, as directed, the Bureau will continue to review and process renewal applications filed before or during the proceeding under the applicable renewal standards in effect on the license's expiration date.

8. The purpose of the above condition is to preserve the opportunities of any party that might otherwise have sought to file a competing application during the proceeding but could not do so because we have prohibited (*i.e.*, frozen) the filing of competing applications during the rulemaking proceeding. Thus, if the Commission determines during the rulemaking that it should retain existing rules and policies that permit the filing of competing applications in a particular wireless radio service, then it would take the steps it deems necessary and appropriate to afford such potential applicants this opportunity.

9. We also note that the Commission might determine during the rulemaking that it will prohibit the filing of competing applications in a particular wireless radio service; in which case, it would accordingly remove the condition from affected licenses.

10. **Further Information.** For further information regarding this Public Notice, please contact Richard Arsenault, Chief Counsel of the Wireless Telecommunications Bureau, Mobility Division, at (202) 418-0920, richard.arsenault@fcc.gov, or Michael Connelly, Attorney Advisor of the Wireless Telecommunications Bureau, Mobility Division, at (202) 418-0132, michael.connelly@fcc.gov.

**V. ORDERING CLAUSE**

11. Accordingly, IT IS ORDERED, that, pursuant to sections 4(i) and 405 of the Communications Act of 1934, 47 U.S.C. §§ 154(i), 405, and section 1.106 of the Commission's rules, 47 C.F.R. § 1.106, that the above referenced Petition for Partial Reconsideration filed by the Wireless Communications Association International, Inc. on August 6, 2010, IS GRANTED to the extent described in this Public Notice and otherwise denied.

Action by the Commission on March 16, 2011: By Chairman Julius Genachowski, and Commissioners Michael J. Copps, Robert McDowell, Mignon L. Clyburn, and Meredith A. Baker.

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<sup>12</sup> We will not apply the condition to renewals of Part 74 Broadcast Auxiliary Services (BAS) stations. Separate renewal applications are not filed for most BAS stations. Rather, most BAS stations are associated with a broadcast station and are automatically renewed when the parent broadcast station is renewed. *See* Licensees of Certain Broadcast Auxiliary Radio Stations Must Submit License Information to the FCC, *Public Notice*, 17 FCC Rcd 8426 (WTB 2002). The Act, moreover, prohibits the filing of competing applications against broadcast renewal applications. *See* 47 U.S.C. § 309(k)(4). Further, our current BAS rules do not provide for the filing of competing applications against standalone BAS license renewal applications, thus making the condition unnecessary.

<sup>13</sup> *See WCAI Petition* at 3 ("One could read the *Order* . . . to suggest that even those licensees that receive a conditional renewal during the pendency of this proceeding will be required to make a 'renewal showing' and submit a 'regulatory compliance demonstration' should those new concepts be adopted in response to the NPRM.").

## APPENDIX

### **Affected geographically-licensed wireless radio services (rule part) (service codes):**

- 1) 1.4 GHz Service (part 27, subpart I) (BA, BB);
- 2) 1.6 GHz Service (part 27, subpart J) (BC);
- 3) 24 GHz Service (part 101, subpart G) (TZ);
- 4) 39 GHz Service (part 101, subpart B) (TN);
- 5) 218-219 MHz Service (part 95, subpart F) (ZV);
- 6) 220-222 MHz Service (part 90, subpart T) (QA);
- 7) 700 MHz Commercial Services (part 27, subpart F) (WU, WY, WZ);
- 8) 700 MHz Guard Band Service (part 27, subpart G) (WX);
- 9) 800 MHz Specialized Mobile Radio Service (part 90, subpart S) (YC, YH);
- 10) 900 MHz Specialized Mobile Radio Service (part 90, subpart S) (YD);
- 11) Advanced Wireless Service (part 27, subpart L) (AW);
- 12) Air-Ground Radiotelephone Service (Commercial Aviation) (part 22, subpart G) (CJ);
- 13) Broadband Personal Communications Service (part 24, subpart E) (CW, CY);
- 14) Broadband Radio Service (part 27, subpart M) (BR);
- 15) Cellular Radiotelephone Service (part 22, subpart H) (CL);
- 16) Dedicated Short Range Communications Service (part 90, subpart M) (QQ);
- 17) Educational Broadband Service (part 27, subpart M) (ED);
- 18) Local Multipoint Distribution Service (part 101, subpart L) (LD);
- 19) Multichannel Video Distribution and Data Service (part 101, subpart P) (DV);
- 20) Multilateration Location and Monitoring Service (part 90, subpart M) (LS);
- 21) Multiple Address Systems (EAs) (part 101, subpart O) (MS);
- 22) Narrowband Personal Communications Service (part 24, subpart D) (CN);
- 23) Paging and Radiotelephone Service (part 22, subpart E; part 90, subpart P) (CP, CZ, GC);
- 24) Public Coast Stations, including Automated Maritime Telecommunications Systems (part 80, subpart J) (PC); and
- 25) Wireless Communications Service (part 27, subpart D) (WS).

**Affected wireless radio services licensed by individual site (rule part) (service codes):**

- 1) 220-222 MHz Service (site-based) (part 90, subpart T) (NC, QD, QO, QT);
- 2) 800/900 MHz (SMR and Business and Industrial Land Transportation Pool) (part 90, subpart S) (SMR: GL, GM, GR, GX, YL, YM, YS, YX; BILT Pool: GB, GI, GJ, GO, GU, YB, YI, YJ, YO, YU)
- 3) Air-Ground Radiotelephone Service (General Aviation) (part 22, subpart G) (CG);
- 4) Broadcast Auxiliary Services (part 74, subpart F) (AB, AI, AS, LP, LV, RP, TI, TB, TP, TS, TT),<sup>14</sup>
- 5) Common Carrier Fixed Point-to-Point, Microwave Service (part 101, subpart I) (CF);
- 6) Digital Electronic Message Service (part 101, subpart G) (CE, PE);
- 7) Industrial/Business Radio Pool (part 90, subpart C) (IG, IK, YG, YK);
- 8) Local Television Transmission Service (part 101, subpart J) (CT);
- 9) Multiple Address Systems (site-based), excluding systems licensed to public safety entities (part 101, subpart O) (MG);
- 10) Non-Multilateration Location and Monitoring Service (part 90, subpart M) (LN);
- 11) Offshore Radiotelephone Service (part 22, subpart I) (CO);
- 12) Paging and Radiotelephone Service (site-based) (part 22, subpart E) (CD);
- 13) Private Carrier Paging (part 90, subpart P) (GS);
- 14) Private Operational Fixed Point-to-Point Microwave Service, excluding licenses held by public safety entities (part 101, subpart H) (MG, WA, WM, WR); and
- 15) Rural Radiotelephone Service (including Basic Exchange Telephone Radio Service) (part 22, subpart F) (CB, CR).

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<sup>14</sup> Part 74 Broadcast Auxiliary Services stations are not subject to the renewal condition. *See supra* note 12.